No. 18,905

United States Court of Appeals

For the Ninth Circuit

KANSAS CITY FIRE AND MARINE INSURANCE COMPANY, a corporation,	*Appellant,*
vs.	
WAYNE A. CLARK, THE MONTANA POWER COMPANY, a corporation, LEW CHEVROLET COMPANY, a corporation, and CLARENCE G. MADSEN,	*Appellees.*

APPELLANT'S REPLY BRIEF

DAVID LIVINGSTON,
2025 Russ Building,
San Francisco 4, California,
Attorney for Appellant.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Table of Authorities Cited

No. 18,905

United States Court of Appeals
For the Ninth Circuit

KANSAS CITY FIRE AND MARINE INSURANCE COMPANY, a corporation,
Appellant,

vs.

WAYNE A. CLARK, THE MONTANA POWER COMPANY, a corporation, LEW CHEVROLET COMPANY, a corporation, and CLARENCE G. MADSEN,
Appellees.

APPELLANT'S REPLY BRIEF

---

1. **There is no such rule—as stated by appellees—that "findings of fact by the trial judge will not be set aside unless they are so inherently improbable that they are not worthy of belief."**

The question presented here is whether there is any evidence to support two findings: (1) that Clark was not operating the aircraft under any training program (Tr. vol. One, 66:14-16) and (2) that at the time of the crash Clark was under the direct supervision and control of Forhart (id. 61:20).

Appellees' brief asserts:

> The findings of fact by the trial judge will not be set aside unless they are so inherently improbable that they are not worthy of belief. (p. 4.)

There is no such rule. Appellees cite *Distillers Distributing Corp. v. J. C. Millett Co.,* 310 F. 2d 162. There the correct rule is stated, viz: that a finding supported by evidence will not be disturbed unless the *evidence* is "so inherently improbable as not to be worthy of belief". In the case at bar the evidence—the policy of insurance and the circumstances of the crash—was not sufficient to support the findings. On the contrary, the evidence required findings (1) that Clark and Chevrolet Co. were not insured; and (2) that at the time of the crash Clark was not under the direct supervision and control of Forhart.

2. The preliminary correspondence and application do not constitute the contract. The policy controls the rights and obligations of the parties.

Pages 5-7 of appellees' brief discuss the "preliminary negotiations". These consisted of the exchange of telegrams and an application for the insurance. They do not constitute the contract. The final and sole repository of the rights and obligations of the parties is contained in the policy of insurance.

Furthermore, the correspondence contains no indication as to who besides Forhart was to be insured; hence, the correspondence could not have any legal effect on the point in controversy.

Appellees (br. p. 7) also refer to the telegram from Cravens, Dargan & Company (Ex. 7) which constituted a temporary binder. Appellees assert:

> By its wire, plaintiff's exhibit 7, appellant bound itself to coverage "per application".

Appellees do not indicate whether or not they place any reliance on this telegram or if so, what effect it has on the issues. In any case the answer is that a binder is in force pending the issuance of a policy. At that point the binder is superseded. This is axiomatic.

Consequently, the legal status of Lynch, who corresponded with Cravens, Dargan & Company, is immaterial. Appellees repeatedly refer to Lynch as appellant's agent (br. pp. 5, 17); appellant's solicitor (pp. 5, 7, 17); and soliciting agent (p. 16). Although the subject requires no comment, it is noteworthy that the telegrams were signed by Lynch Flying Service Inc. and the replies were addressed not to Lynch but to C. J. Carroll Agency. Lynch was the operations manager of Lynch Flying Service Inc. (Tr. vol. Two, 6:2.) He was also a licensed solicitor under the C. J. Carroll Agency (id. 7:3-5) pursuant to section 40-3321 of the Insurance Laws of Montana, section (4) of which provides:

> A solicitor shall not have authority to bind risks or countersign policies.

Lynch was not an employee of appellant, nor of Cravens, Dargan & Company. If appellees seek to convey the impression that Lynch had authority to bind the insurance company, the foregoing discussion should suffice to dissipate it.

3. Appellees ignore the proposition that the policy contains separate and independent provisions as to the identity of the insured and the permitted use of the aircraft.

The policy contains a clause determining the identity of those—besides Forhart—who come within the category of "insured". If Clark is not included, that is the end of the case.

But even assuming that Clark was an insured there arises another question, viz., whether the flight was under the direct supervision and control of Forhart.

Appellees' brief does not dispute these aspects of the appeal. But in their argument they indulge in a hopeless jumble of these two separate and independent clauses. This would be understandable if the distinction had not

been labored in the insurance company's opening brief. It is the sole subject of section 1. (pages 8-11.)

Appellees fail to offer any answer to this point. There is none. The rule that various clauses in a contract may be used to aid in the interpretation of each other is applicable only where the clauses pertain to the same subject. In the case at bar the two clauses are completely different in their purpose and application.

Exemplifying appellees' confusion of the two provisions are the following:

(a) In Item 6 of the Declarations one of the subdivisions (f) is headed SPECIAL USES. There follows: "The term SPECIAL USES is defined as student instruction." Appellees argue that at this point the policy should have proceeded to say: "The term 'the insured' does not include Student Pilots, and Student Pilots are not covered by this policy". (br. 11.)

The obvious answer is that the subject of special uses is altogether different from that of the identity of those insured by the policy. This was not the proper place for a provision with respect to a different subject.

(b) Item 7 of the Declarations contains the words "See Endorsement No. 3". This endorsement contains the provision concerning permitted use for student instruction. Appellees (br. p. 11) make the same argument as above, saying:

> Once again, if it was so intended, how easy it would have been to insert at this point: "The term 'the Insured' does not include Student Pilots, and Student Pilots are not covered by this policy".

The same answer as stated above is appropriate. Endorsement No. 3 concerned permitted uses. It was not the proper place for the designation of the insured.

(c) At page 30 of their brief appellees state that appellant urges that "student instruction" and "training program" are synonymous terms. Before quoting further from appellees' comment it should be noted that the insurance company does not urge or advance any such contention. On the contrary, the insurance company has been at pains to point out the difference between the two terms (see op. br. pp. 16, 18). "Student instruction" would be a proper term to describe a single flight. This could not possibly be considered a "training program".

Returning to appellees' brief, they proceed (p. 31) to pose a series of rhetorical questions which are pertinent to the projected use of the aircraft. This has nothing to do with the definition of "insured".

Appellees' brief passes from one subject to the other and back again with the result that their argument is hopelessly confused. In doing so they completely misstate or misunderstand the contention of appellant. They say:

> Appellant would have this Court take an isolated, printed term from the omnibus clause—training program (which is not defined in application, policy, or dictionary and concerning which appellant submitted no evidence despite appellant's burden of proof), reject the fact determination by the trial court which is based upon the only evidence in the record, the evidence from Clark, and destroy or eliminate the uses expressly authorized by appellant in the declarations inserted by appellant by typewriter. (p. 33.)

The fact is that appellant's contention is the exact opposite. Appellant complains that the judgment against it is based on the theory that because the omnibus insured clause does not contain the same term "student instruction" as the use clause, the limitations of the omnibus clause should be disregarded. We do not ask that the omnibus clause be utilized to modify the permitted use.

We do not ask that it be utilized for any purpose except to define the category of those insured with the result that the clause does not extend its benefits to Clark because he was operating the aircraft under a training program.

4. Appellees' brief ignores the significance of the authorities cited in appellant's opening brief explaining the distinction between the provision as to permissive use and that as to the scope of the word "insured".

In section 1 of appellant's opening brief *Farm Bureau Ins. Co. v. Daniels,* 104 F. 2d 477 (4th Circ.) and *Standard Surety Co. v. Maryland Cas. Co.,* 119 N.Y. Supp. 2d 795, were analyzed.

Appellees (br. pp. 32-3) admit that in *Farm Bureau Ins. Co. v. Daniels* "the Court refused to use the omnibus clause, defining persons insured, to extend or broaden the uses defined in the declarations". Appellees then say: "We have no quarrel with that view". In that case appellees have in effect conceded the fallacy of the theory on the basis of which they persuaded the District Court to decide in their favor. They admit that "the omnibus clause" cannot be used "to extend or broaden the uses defined in the declarations". (br. pp. 32-3.) This principle must likewise operate in reverse. The use clause cannot be utilized "to extend or broaden" the scope of "the clause defining persons insured".

Appellees discuss *Standard Surety Co. v. Maryland Cas. Co.,* 119 N.Y. Supp. 2d 795 (br. pp. 33-4) but ignore that aspect of the decision which distinguishes between the object and effect of the two separate provisions of the policy.

The policy in the *Standard* case provided indemnity for personal injuries for which the insured was liable. But it excluded injuries to the insured's employees. The person injured was an employee. Hence, there was no coverage.

Appellees accurately describe the decision. But they ignore the effort of the employer to procure a different result by invoking the provision defining the "Insured". This was rejected by the court and the text of the opinion on this point is quoted at pages 10-11 of our opening brief. Appellees ignore it. But they say again that they "do not quarrel with this decision". (br. p. 33.) This again is a significant admission.

Appellees' brief does not mention that aspect of *Petro v. Ohio Cas. Co.*, 95 F. Supp. 59, in which—by way of dictum—the two clauses were confused. Appellees must be aware that it was on this dictum that Judge Jamison relied in emasculating the provision defining those insured by the policy. (See op. br. pp. 14-16.) Hence, appellees must be deemed to recognize the fallacy of *Petro* and likewise that of the decision at bar insofar as it is based on that case.

5. Appellant does not contend—as appellees profess to believe—that Forhart was the only person insured by the policy.

Forhart is not the sole insured. The omnibus clause includes others besides Forhart. This is demonstrated in appellant's opening brief, at pages 18-19. There are three separate categories—besides Forhart—of persons who could come within the scope of the omnibus clause. This was appellant's answer to the contention adopted by Judge Jamison that if the insurance company intended that Forhart was the only person contemplated by the term "the Insured" those precise words should have been incorporated in the omnibus clause.

Appellees' brief repeatedly advances the same contention. (pp. 9, 12, 29, 31.) It was anticipated in our opening brief.

The same comment is applicable to appellees' contention (br. pp. 13, 29) that the insurance company should have included in the omnibus clause the statement:

> The term "the Insured" does not include student pilots. Student pilots are not covered by this policy.

The answer is, as appears in appellant's opening brief (pp. 18-19), that a casual student pilot not engaged in a program would be an omnibus insured. Likewise, a student pilot—even though engaged in a program of instruction—would be an omnibus insured provided that no remuneration to Forhart was involved.

Appellees also suggest (br. p. 13) that the omnibus clause should have stated that "training program" includes any form of student instruction or that students receiving any form of student instruction are considered to be in a training program. The answer is the same and for the same reasons. A student receiving a single lesson in flying is not excluded. Likewise, one engaged in a regular course could not be excluded if he paid no remuneration.

Appellees (br. p. 29) even go so far as to assert that if the policy intended to insure Forhart alone it was required by Montana law "to expressly so state in plain, simple and unambiguous language. How extremely simple and easy it would have been to put this in the policy." The answer is again that this was not the intent of the policy.

6. "Training program" are words of ordinary usage in the English language. They require no definition nor amplification.

Having brushed aside all the confusing aspects of appellees' argument we reach the basic issue: What does "training program" mean and was Clark engaged in such a program?

Insurance policies are prepared for persons engaged in business. They are not morons. They are presumed to be of normal intelligence. That is all that is required in

order to understand the term "training program". These words are in ordinary usage.

Appellees also insist that the insurance company must introduce evidence of "the intent and meaning" of the words. (br. p. 29.) They persuaded Judge Jamison to rule accordingly. The point was anticipated in our opening brief. (pp. 14, 30.) An United States District Judge is as capable of comprehending the words of ordinary usage as any expert in philology. Subsequent to the preparation of our opening brief the case of *Lange v. Nelson Flight Service,* 108 N.W. 2d 428 (Minn.), came to our attention. There Lange held a commercial pilot's license. He desired to rent an airplane, and it was necessary that he make a checkout flight in the plane with an instructor before he was permitted to fly alone. Lang's status was described by the court as follows:

> The evidence is clear and uncontroverted that defendant, despite holding a pilot's license, had the status of a *trainee* during the checkout flight. (Italics supplied.) (p. 432.)

Another argument of appellees is that neither the dictionary nor Words & Phrases defines "training program". As to the dictionary, it customarily contains a definition of single words. Our opening brief (pp. 11-12) quotes the dictionary definition of the word "training". Appellees ignore this. A training program is a plan or course for the development of proficiency. That is precisely the activity in which Clark was engaged.

Appellees apparently concede that the dictionary may be consulted in order to ascertain the meaning of "training program". Our opening brief (pp. 13-14) cited two federal decisions in which the dictionary was used. One of them is *Insurance Co. of N.A. v. General Aviation Co.,* 283 F. 2d 590. Yet appellees say (br. p. 34): "We cannot see why appellant cites" this case. The reason is obvious.

As to Words & Phrases, the purport of appellees' argument is that unless on some previous occasion a court has been called upon to give effect to the words "training program" so that the definition appears in Words & Phrases, then it follows that when a court is called upon for the first time to give effect to the term it is barred from attributing to it its ordinary meaning in the English language. On its face, this contention is absurd.

Appellees also call attention to the fact that the Uniform Aeronautics Code adopted in Montana does not define "training program". (br. p. 21.) Appellees offer no reason why these words should appear in the Code at all.

Appellees mention (br. p. 30) various instances of training programs. This was anticipated in our opening brief. (pp. 16-18.) It was there demonstrated that Forhart's privately owned aircraft could not be used in connection with an official activity. He could engage only in private instruction. Furthermore, "any" program would include both private and public. This is exemplified in *Lambert v. New England Fire Ins. Co.,* 148 Me. 60, 90 Atl. 2d 451. (op. br. pp. 17-18.) Appellees mention *Lambert* saying that it "gives effect to a clearly expressed exclusion clause". (br. p. 34.) This, of course, ignores the pertinent aspect of the decision.

Appellees charge (br. p. 18) that the policy contains a "morass of ambiguous fine print clauses which not only conflict between themselves, but which contradict and conflict with the typewritten inserts." This complaint is unwarranted. There is nothing ambiguous about the words "training program"; there is no typewritten clause on the subject; there is nothing in the policy which conflicts with the provision containing the "Definition of Insured" and the print is plain and legible.

Appellees (br. pp. 23-4) cite *Holmstrom v. Mutual Benefit Health & Accident Ass'n,* 139 Mont. 426, 364 P.2d 1065, where the subject of fine print is mentioned. The issue there was whether a health and accident policy was cancellable. It contained a "Non-Cancellable Endorsement" providing against cancellation (p. 1066). This was printed in bold-faced type. (id.) In support of its asserted right to cancel the Mutual Benefit relied on another provision stating that "the acceptance of any premium on this policy shall be optional with the Association." (p. 1067.) The court rejected this contention holding:

> In our judgment this sentence is not consistent with the more boldly printed portions of the policy previously noted. It is not only ambiguous but conflicting. Here the appellant insured a man of forty-three, and continued to take his premiums for said insurance for a period of thirty-one years during which time he had no reason to believe that he did not have a non-cancellable policy. The time has passed when responsible insurance companies can hide, in the fine print, escape clauses that will leave responsible citizens uninsured in their senior years. (p. 1067.)

The foregoing demonstrates that *Holmstrom* is in no way pertinent to the case at bar.

7. There is no Montana statute or decision which supports appellees' effort to deprive the words "training program" of their plain and ordinary meaning.

Appellees assert (br. p. 28) that the law of Montana requires a definition "in plain, simple, unambiguous language" of the words "training program", if the insurance company "desired some specific application" of the term.* There is no such Montana law. This will be

*Appellees also contend (br. p. 28) that Montana law requires that an insurance policy contain a definition of "student", "student pilot", and "student instruction". This contention

demonstrated later by an analysis of the cases cited by appellees. It is only when an insurance company seeks to amplify the effect of a word, or to accord to a word some unusual meaning that the courts will decline to do so, unless the policy contains appropriate amplification. But they have consistently enforced words in ordinary use in an insurance policy.

There is nothing in the general rules of construction quoted from Montana statutes and decisions (appellees' brief, pp. 19-28) which prevents the application of the words "training program" to the course of instruction in which Clark was engaged, and there is no Montana case which even remotely bears on the problem at bar.

In the previous section we have analyzed and distinguished *Holmstrom v. Mutual Benefit Health & Accident Ass'n,* 139 Mont. 426, 364 P.2d 1065. (Appellees' br. p. 23.)

Appellees cite (pp. 21-3) *Park Saddle Horse Co. v. Royal Indemnity Co.*, 81 Mont. 99, 261 P. 880. There the insured was covered on account of liability "arising by reason of the maintenance and/or use of saddle and pack horses." The claimant was a member of a saddle horse party in Glacier Park. They became lost. The country was rugged and it was deemed necessary to dismount and proceed on foot. The claimant slipped and fell and suffered injuries. The court held:

> The entire transaction grew out of, and the accident happened on account of, or by reason of, the use of the horses, and it grew out of the use of horses in the operation of the insured's business. (261 Pac. 884.)

The decision contains nothing to assist the court in determining the meaning of a training program.

---

borders on absurdity. However, these words are not involved in the controversy. There is no accountable reason for appellees' reference to them.

Next is *Montana Auto Finance Corp. v. British and Federal Underwriters,* 72 Mont. 69, 232 Pac. 198. (br. p. 24.) This case involved a confiscation bond issued to the owner of an automobile which was sold under a conditional sales contract. The bond provided indemnity against loss sustained as a result of confiscation by "municipal, Federal or state authorities."

The automobile was seized and confiscated by Canadian officers within the Dominion of Canada. The question was whether the Dominion of Canada could be deemed included within the scope of the term "municipal, Federal or state authorities." The court held in the affirmative relying on a provision in the British North America Act of 1867 to the effect that the provinces had "expressed their desire to be federally united into one dominion." The court also stated the general rule concerning interpretation in favor of the insured. The decision is entirely irrelevant to the issue at bar.

Next is *Johnson v. Continental Cas. Co.*, 127 Mont. 281, 263 P.2d 551. (br. pp. 24-6.) There an accident insurance policy covered injuries sustained from the wrecking of various kinds of vehicles including "motor-driven car, truck, wagon." It excluded "motorcycles and farm machinery." Johnson was fatally injured as the result of the overturning of a caterpillar tractor he was driving for the purpose of "skidding saw logs from the place where felled in the woods to the roadway where they could be loaded on motortrucks and hauled to the saw mill." (p. 551.) The court held:

> The contract used the terms "private commercial automobile," and "truck" and it is evident that by the use of the all-inclusive term "motor-driven car" the parties intended something more than what is usually denominated an automobile or a truck. This is further evidenced by the clause "(excluding motorcycles and farm machinery)". The only reasonable

> excuse for this exclusion clause is that without it the parties intended that motorcycles and all forms of motor-driven farm machinery would be included within the comprehensive classification of "motor-driven cars [or] trucks." Had defendant desired to exclude any other motor-driven vehicle than motorcycles and farm machinery it should have done so expressly. (p. 552.)

The case is not in point. The insurance company was striving for a strained and restricted construction which the language of the policy did not permit. This prompted the comment that if the company desired to exclude other motor-driven vehicles than those named, it could have done so.

Finally, appellees cite (pp. 26-8) *Keating v. Universal Underwriters,* 133 Mont. 89, 320 P.2d 351 (1958). There the policy insured a garage keeper against liability to others for damage to vehicles left in his charge. He had in his possession pursuant to a trust receipt an automobile the title to which was in General Motors Acceptance Corporation. The vehicle was in a wreck and the question arose whether the damage was covered. The insurance company resisted the claim on the ground that the policy contained an exclusion of property "owned" by the insured. The court held that the garage keeper was not the owner and therefore the insurance company was liable. Obviously, there was no sound reason for interpreting the words "owned" by the insured to include a vehicle held by the insured under a trust receipt. Thus, the court gave the word "owned" its ordinary meaning—just as in the case at bar the words "training program" must be given their ordinary meaning. The effort of the insurance company to expand the meaning of "owned" prompted the court to point out that it could have inserted in its policy language to the effect that the word "owned"

included vehicles which were floored or held under trust receipt.

The difference between *Keating* and the case at bar is clear. Appellant is not seeking to enlarge the meaning of "training program", but is content that it be given its ordinary significance.

Pages 36-7 of appellees' brief contain a list of twelve cases. Since no effort is made to explain them, appellees apparently attach little or no importance to them and no further comment is necessary in reply.

8. Appellees offer no answer to the apt description of a training program which is contained in Clark's explanation of his course of instruction.

In our opening brief (pp. 12-13) we quoted from Clark's response to a request for admission in which he described his agreement for instruction which contemplated hours of dual-time flying with Forhart and hours of solo time. This explanation constitutes a precise description of a training program. Appellees do not mention this portion of Clark's response. Obviously, they are unable to provide any answer. Likewise appellees ignore Clark's reference to his "solo flight training" in his statement, marked Exhibit 8. (See op. br. p. 12.)

All that appellees offer (br. p. 14) is another portion of Clark's response in which he gives his "understanding" of the meaning of a training program. This was anticipated in our opening brief. (p. 12.) It is the function of the court to determine the meaning of words in ordinary use. The "understanding" of a witness—particularly one who is an interested party—has no evidentiary effect.

9. **The insurance company's payment of the hull damage was not an interpretation of the policy. It was a waiver of its right to resist the obligation. In any case it is not relevant to the definition of insured as applied to the facts of the case.**

Forhart was the named insured. Hence, any payment of hull damage could not have any effect on the issue as to those who came within the category of "insured". Appellees apparently concede this and confine their contention to the issue as to permitted use under Item 7 of the Declarations which incorporates Endorsement Number 3.

Appellees' contention was anticipated in section 6 of our opening brief. (pp. 26-8.) Appellees' brief ignores this discussion. Instead of answering it appellees advance the contention (br. p. 11) that "by its conduct" the insurance company has interpreted the intent of the contract to mean that Clark was a permissible pilot. The answer is that the rule of practical construction of a contract applies to the conduct of the parties prior to the development of a controversy. When a dispute arises the rights of the parties are fixed. What the insurance company did after commencement of suit involves the matter of waiver. Despite their protest to the contrary, appellees are really contending that in paying the hull loss the insurance company deprived itself of its right to dispute Clark's status as a permitted pilot. But no matter whether practical construction or waiver is involved the fact remains that our opening brief adequately disposes of the point. And again appellees have ignored the discussion.

10. A flight involving a landing at a distant airport and an attempt to take off with three passengers without the knowledge of the instructor is not under his direct supervision and control.

Appellees devote four pages of their brief (pp. 7-11) to quotation of the provisions of the policy concerning permitted uses. They confess that "repeated reading by legally trained minds (presumably appellees' attorneys) compound confusion upon confusion". (p. 7.) We submit that this confusion is self-imposed. The learned District Judge—surely a trained legal mind—had no difficulty in analyzing the use clauses of the policy and ascertaining that instruction was permitted provided that it was under the direct supervision and control of Forhart. (See Tr. vol. 2, p. 50.)

Appellees' brief (pp. 15-16) quotes testimony of Clark and Lynch, and the statement of Clark. (Ex. 8.) This was discussed in our opening brief. (pp. 21-5.) Our analysis demonstrated that at the time of the crash the flight was not under the direct supervision and control of Forhart.

Appellees either misunderstand or misrepresent our contention. Referring to Clark's statement and testimony they assert:

> Appellant suggests the District Court should have disbelieved this evidence. (p. 16.)

No such suggestion has been made. No question of credibility is involved. The ground of appeal now under discussion is that assuming the truth of all the testimony favorable to appellees the only possible conclusion to be drawn is that Clark was not under the direct supervision and control of Forhart at the time of the crash.

The same misconception appears in appellees' assertion (br. p. 17) that appellant "objects because the District

Court considered and believed all of it (Lynch's testimony) along with Clark's corroborating evidence'' and again in appellees' argument (p. 15) that the trial judge observed Clark's ''manner, appearance, and the like''.

The insurance company had the right to insist on direct supervision and control during a flight by a student—a requirement which was necessarily breached when Clark undertook a flight to a distant airport. Forhart's permission could not bind the company.

Appellant's opening brief (p. 25) points out the contradictory aspect of the decision below holding that appellant must pay claims made against Lew Chevrolet Co. That company can be held liable only on the theory of respondeat superior as the employer of Clark. A condition precedent to this ruling is that Clark was acting in the scope of his employment—that is, that he was engaged in selling an automobile. On that hypothesis Clark was not taking instruction and the use of the aircraft was not permitted. Appellees' brief ignores the point again recognizing that it is unanswerable.

Dated, San Francisco, California,
March 5, 1964.

Respectfully submitted,
David Livingston,
Attorney for Appellant.

(Appendix Follows)

Appendix.

Appendix

Schedule of Exhibits:	Reference to Record
Exhibit No. 7—Telegram	T.R. Vol. 1 p. 2
Exhibit No. 8—Statement of Clark	T.R. Vol. 1 pp. 15, 17